HIGH COURT OF CHHATTISGARH: BILASPUR

Single Bench: **Hon'ble Shri Dilip Raosaheb Deshmukh, J.**

Civil Revision No. 130 of 2006

Applicant	:	Sankhala Brothers, Proprietor Munnalal Jain, son of Late Sagar Mal Jain, aged 55 years, Main Road, Jagdalpur, District Bastar (CG)
Non-applicant		**Versus**
Non-applicant		Ajit Tex, Proprietor P. Umendra Chandra Jain, resident of Balaji Ward, Jagdalpur, District Bastar (CG)
Applicant		

Civil revision under Section 115 of C.P.C.

Present:
Shri H.B. Agarwal, Senior Advocate with Shri Pankaj Agarwal, counsel for the applicant.
Shri Manoj Paranjpe, counsel for non-applicant.

ORAL ORDER
(Passed on 15.11.2007)

Heard on I.A. No.1490/2006, which is an application under Section 5 and 14 of Limitation Act for delay in filing the revision.

(2) Not opposed.

(3) Application is allowed. Delay in fling the revision is condoned.

(4) Heard on admission.

(5) The applicant is aggrieved by an order dated 16.12.2005 passed by the III[rd] Additional District Judge, Jagdalpur (CG) in miscellaneous civil case No.9/2005, whereby the prayer of the applicant/plaintiff for refund of the court fees paid by him along with the plaint in an earlier suit (civil suit No.4-B/2004) which was rejected for non-compliance of Order-6 Rule-15 sub-rule (4) of C.P.C. was turned down.

(6) Section 13 of the Court Fees Act reads as under:-

(22)

> **"Refund of fee paid on memorandum of appeal.-** If an appeal or plaint, which has been rejected by the lower Court on any of the grounds mentioned in the Code of Civil Procedure, is ordered to be received, or if a suit is remanded in appeal, on any of the grounds mentioned in section 351 of the same Code, for a second decision by the lower Court, the Appellate Court shall grant to the appellant a certificate, authorizing him to receive back from the Collector the full amount of fee paid on the memorandum of appeal:
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> Provided that, if in, the case of a remand in appeal, the order of remand shall not cover the whole of the subject-matter of the suit, the certificate so granted shall not authorize the appellant to receive back more than so much fee as would have been originally payable on the part or parts of such subject-matter in respect whereof the suit has been remanded".

(7) In view of the fact that applicant/plaintiff had filed a fresh suit and did not prefer any appeal against the order dated 22.10.2005 passed in an earlier suit (civil suit No.4-B/2004) rejecting the plaint for non-compliance of Order-6 Rule-15 sub-rule (4) of C.P.C the application under Section 13 of Court fees Act, 1870 would not lie in a subsequent suit.

(8) In view of the above, there is no merit in this revision which is accordingly dismissed.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Priya